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REVIEWS AND CRITICISMS

peaceable. Not out of preaching, but out of sound bodies and disciplined minds will come at last, peace on earth, good will to men."

To this, Ross Hartwell, the wealthy, sporty man-about-town replies, with a touch of characteristic humor:

"Well, after all, it's nice to have some rascally ancestor or a bad digestion to fall back on. (Sarcastically.) If it were only possible to hang or imprison your great grandfather, or fine your liver ten dollars and costs,"

But the Doctor goes on:

"Every child has a right to be well born, and we must help him to come into his own. He can't select his own parents, hence we should do some selecting for him. It is for society to say whether the marriage license shall be a ticket to hell for souls unborn, or a passport to the only heaven we are sure of—a happy, wholesome life. Society should protect the unborn. Some parents have no right to have children—many prospective children have the right not to be even conceived. The sins of the fathers are visited only through the blood of the fathers. Even the sinless bad blood of one generation may be the criminal bad blood of the next. Good, clean blood will wash the devil off the map."

Northwestern University.

EDGAR WHITE BURRILL.

BEITRAGE ZUR OFFENTLICH-RECHTLICHEN BEGRIFFSKONSTRUKTION, Von Dr. Herr Rudolf Slawitscheck. Rothschild, Berlin, 1910. Pp. 29.

This brochure contains a solidly packed abstract argument, which in outline is as follows:

Private law borrowed a terminology from a dead language and a dead culture, and it is only the dead that have unchanging concepts, and words of changeless meaning. Public law is still confronted with the full difficulty of forming for itself an adequate, and generally acceptable terminology. The difficulty lies in the fact that public law is itself included in the process by which what has been, changes unceasingly into that which is to be; and it is necessary on the one hand to avoid empty formalism, and on the other to escape taking color from indefinite and unsettled economic and political tendencies.

The solution lies in the fact that there are universals in social tendency, such as Spencer and Gumpłowicz have pointed out. The state is only "a special case within the great domain of society."

Laws are included in a social psychic life, and subject to the generalizations which apply to that life. That life includes ideas which are temporary and changing, adapted to existing conditions, growing out of inter-group influences, affecting while they last the social life of many peoples, wide in their spatial application but limited in duration. These may be called age-thoughts—it includes also, social factors that endure through ages, but are peculiar to the people among whom they originate. These may be called folk-thoughts.

To these permanent psychic tendencies Kant and Herder gave a metaphysical interpretation, allied to the informing *ideas* of Plato. Lamprecht has brought this vaguely perceived reality to clearer apprehension. He teaches that when many persons have sentiments, ideas, and a will in common, the result is not a mere sum of individual feelings, ideas and volitions, but a combination in which the individual

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parts are other than they ever could have been in isolation, and the whole a kind of reality requiring to be conceived in terms that do not apply to the individual activities of which it is compounded. There is nothing transcendental about this complex reality.

Age-thoughts arise because, although the nation is the most conspicuous of social realities, yet the social causal interrelationship rises above nations (as well as operating on many a smaller but significant scale) and embraces world-history. The social psychic life of every culture-period exhibits a characteristic habit which passes slowly, and by a distinct method, and in a necessary order into the habit peculiar to the succeeding period.

The notion of a folk-thought is made clearer, if guided by Spencer's statement of the nature of evolution, we note that races do not merge into homogeneity but issue out of the indefinite mass of humanity into even clearer individuality. This, as Bastian also says, is what history actually discloses. The elements within a population influencing each other, work out those generally accepted ideas which constitute the hereditary treasure, and distinctive character of a people. These common products and possessions of a people are not to be confined (after the manner of the old folk psychology) to language, customs and myths. They include all public organizations (Cf. Cooley) which are in fact only folk-thoughts modified by age-thoughts. Moreover, since social relatives differentiate and evolve by reason of their mutual interrelationship, therefore each single idea can be understood only in its systematic connection with the whole.

Age-thoughts are generally recognized, as illustrated, by such a catch-word as *Zeitgeist*. They have been treated by G. Vellinek in his *Kampf des alten mit den neuen Recht*. Once he declares that the struggle of law against law is in reality a struggle of thoughts against thoughts.

As to the amenability of the *age thoughts* to natural law, that is a subject for special sociological research. Here we should need to give heed to Tarde's law of extra-logical imitation; and we might be tempted to interpret his statement that custom imitation diminishes as civilization advances to mean that folk-thoughts give way before age-thoughts, or world-thoughts. That, however, would hardly be true to the facts, for thoughts of both types continue their interplay, the age-thoughts mediating group contacts that afford the conditions for the rise of ever new ideas which but for such contacts would have been impossible to the folk-groups in which they originate.

Ideas, even those which we call folk-thoughts, take shape in individual intelligences, but the process, subjective as it is, has more than a personal significance. The development of these ideas is not a merely personal process, and once formed, they unite into social agreements and disagreements, and objectify themselves in legislation, and in other forms of social practice, which in their turn go on modifying each other.

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To apply this sociological interpretation to the formation of a terminology for public law, one must distinguish:

- (1) Folk-thoughts, the fundamental realities.
- (2) Age thoughts, the abstracted common elements in contemporaneous concepts.
- (3) Subjective concepts, the notions formed in individual minds by the intersection of the folk-thoughts and age-thoughts, in presence of which the individual lives and thinks.
- (4) The objectification, or visible fixation of these social ideas.
- (5) Discussion, and the tendency to extend the chain of social concepts beyond its present stage of development and adaptation.

The work above outlined is one more interesting example of the growing tendency among European writers to adopt the point of view and guiding concepts which have been worked out by students of sociology. Its contrast between folk-thoughts and age-thoughts is to a degree original.

Whether the sociological concepts have already taken their proper shape or not, it seems clear that the facts pertaining to social life as such and as a whole, which sociology attempts to formulate, have fundamental importance for every special social science. For a really scientific interpretation of political facts it is essential to recognize that more significant than written constitutions and official practices is that unwritten social constitution of which written constitutions and official practices are but one manifestation; to recognize that government and the state are only parts of the social whole, and that they are to be interpreted by reference to causal principles that operate throughout that whole; to recognize that the social constitution is composed of psychic realities; to recognize that these psychic realities by their causal interrelationship inevitably organize themselves into complex unities, which have as truly a natural evolution as do flora and fauna; and to recognize that the simplest of these psychic unities, as well as complex organizations, into which they form themselves, are social, in the sense that their production would be totally impossible to isolated individuals, and even that the life of an individual fit to be counted as a member of any society is composed of elements which he owes to the previous or contemporaneous activity of many associates or predecessors.

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EDWARD C. HAYES.

DIE BESTRAFTEN IN DEUTSCHLAND, NEBST EINEM KRIMINALSTATISTISCHEN ATLAS. Von Dr. jur. *Karl Finkelnburg*, Direktor des Koeniglichen Zellengefaengnisses Moabit. J. Guttentag, Berlin, 1912. Pp. 48 and xxxiv.

This monograph is a statistical study of the number of violators of the German national code of laws (*Reichsgesetz*) from 1882 on, when the governmental records were authorized and begun. By adding the number of first offenders annually from 1882 until 1910 and then subtracting the approximate number of deaths and emigrations as well as several other smaller items, such as allowance for incompleteness of